



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

Case No.: 470-2014-00962

██████████,
Complainant,

v.

MARCO'S INDIANA, LLC
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission,") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On April 9, 2014, ██████████ ("Complainant") filed a Complaint with the Commission against Marco's Pizza ("Respondent") alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*). Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent terminated Complainant because of his disability. In order to prevail, Complainant must show (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting his employer's legitimate performance expectations; and (4) similarly-situated employees without impairments were treated more favorably. While Respondent was given numerous opportunities to participate in the Commission's investigation, it has refused to do so; thus, this finding is based solely upon Complainant's rendition of events.¹

By way of background, Respondent hired Complainant in November 2013. At all times relevant to the Complaint, Complainant had a mental disability that impaired his ability to learn and understand as quickly as non-impaired individuals. The disability also caused Complainant to work slower than other employees; nonetheless, Complainant asserts that he informed Respondent's owner of his disability upon hire and during the course of his tenure with Respondent. Complainant

¹ While the Commission has sent several requests for information to the Respondent on or about June 22, 2014 and August 17, 2015 respectively, as well as issued a subpoena requesting a response by September 1, 2015, Respondent has failed to comply. As such, this notice of finding is based upon Complainant's assertions and Respondent's interview dated September 25, 2014.



asserts that on or about November 23, 2013, Respondent terminated his employment because he “worked too slowly” and could not “pick up the pace.” While Complainant alleges that he disputed his discharge, reminding Respondent of his disability and subsequent impairments caused by the disabilities, Respondent stated that he “did not have time to discuss the matter,” failing to engage in the interactive process with Complainant. Based upon the facts taken in the light most favorable to the Complainant, he has a disability as defined under the law. Moreover, Complainant’s act of reminding Respondent of his disability and its effects triggered Respondent’s responsibility to engage in the interactive dialogue process with Complainant. Rather, Respondent simply terminated Complainant’s employment. It is important to note that Complainant asserts that other employees worked slowly or otherwise failed to meet expectations, including two female employees who would “twerk” or “shake their rear ends in front of male customers to the pizzeria.” As a result of Respondent’s failure to engage in a discussion with Complainant to determine whether an accommodation would have permitted him to retain his employment, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910-IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

September 3, 2015
Date

Akia A. Haynes
Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission